

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-487-W - ORDER NO. 2003-179

MARCH 27, 2003

IN RE: Application of Dowd Water Systems, Inc. for) ORDER DISMISSING ✓
Approval to Abandon the Water System in the) RULE TO SHOW CAUSE
Isle of Pines Subdivision, Lexington County,)
South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Rule to Show Cause issued to Dowd Water Systems, Inc. (Dowd or the Company) for the Company to show cause as to why the Commission should not escheat Dowd's performance bond, and to show cause to this Commission as to why the Company should not be subject to fines and penalties pursuant to the provisions set out in S.C. Code Ann. Section 58-5-710 (Supp. 2002). This Rule to Show Cause was issued in our Order No. 2003-66. Because of the following reasoning, the Rule is dismissed.

Pursuant to the Commission Order, a hearing was held on March 10, 2003 in the offices of the Commission, with the Honorable Mignon Clyburn presiding. The Commission Staff was represented by F. David Butler, General Counsel, and Jeffrey M. Nelson, Staff Counsel. Dowd was represented by David Knight, Esquire, and Scott Elliott, Esquire. The Commission Staff presented the testimony of William O. Richardson, Vivian B. Dowdy, Staff members, and Raymond Peterson of the South Carolina Department of Health and Environmental Control (DHEC), who was

subpoenaed to appear. Dowd presented the testimony of the Company President, Sue Dowd.

The Commission Order also provided for an audit of the Company's books and records to determine the actual financial condition of the Company. Testimony regarding that audit was provided by Vivian Dowdy, an Auditor with the Commission's Audit Department. Mrs. Dowdy reviewed the financial records for the year ended December 31, 2002. Per book figures produced an operating margin for the Company of (4.64%). After accounting and pro forma adjustments, the resultant operating margin for the Company was 3.36%.

William Richardson, a Staff engineer, summarized the provisions of Order No. 2003-66. Richardson testified that this Commission approved conditional abandonment of the Isle of Pines system. The Company is required to comply with the provisions of DHEC Regulation 61-71.10 and other applicable regulations with regard to closing out the system's well, so as to minimize the chances for contamination of the aquifer. The Staff is required to monitor the operation of the system as needed, in order to help guarantee and protect the public health. Further, the Company is required to make necessary and nominal repairs to the Isle of Pines system to keep its water system functional and to keep the system serving its customers. The remaining provisions of the Order discuss the financial audit and the two parts of the Rule to Show Cause.

Raymond Peterson of DHEC testified also. Peterson testified to a number of facts relevant to Dowd's operation. First, with regard to the Isle of Pines portion of the system, Peterson noted that DHEC had an additional cost estimate for the interconnection of this

system with the Town of Chapin water system. The new cost estimate was \$51,120.00. This estimate included the use of four inch water lines. Further, Peterson noted that a meeting had recently been held between DHEC and the Town of Chapin. The Town of Chapin had stated that it will accept operation and maintenance of a water line from a connection point on the Chapin Water System (Night Harbor) extending to the existing water tank at the entrance to the Isle of Pines Development, with several contingencies related to the operation and maintenance of the system. These included the fact that others should fund the cost of engineering, system transfer, construction, master meter and other matters. Further, Chapin stated that no tap fees will be charged to the residents provided the water is master-metered. Tap fees would be the responsibility of the system owner.

Peterson also reviewed various matters concerning the Dowd Company, including the fact that Dowd is under a Consent Order with DHEC to either refurbish the Isle of Pines system or turn it over to another provider.

Sue Dowd testified on behalf of the Company. Mrs. Dowd commented on some of the Commission Staff's financial findings. Mrs. Dowd noted that she has a negative cash flow with regard to her systems, and she has to put her own money into them to keep them operating. Mrs. Dowd explained that her job with the water system is twenty-four hours per day, seven days a week, three hundred and sixty-five days per year. She actively works with her Company's systems over thirty (30) hours per week. Mrs. Dowd noted that she had to pay for major repairs to her systems herself.

Mrs. Dowd testified that she inherited the system from her late husband, and that the Company has cash flow problems. Accordingly, she stated that she does not believe that fines and penalties would serve any purpose for the benefit of the ratepayers, herself, the Commissioners, or the customers of her systems, because of these cash flow problems.

FINDINGS OF FACT

1. Dowd Water Systems, Inc. operates three water systems in Lexington County, South Carolina.

2. The overall as adjusted operating margin for the Company is 3.36%.

3. The Town of Chapin has stated that it would accept operation and maintenance of a water line from a certain connective point in order to serve the Isle of Pines Subdivision under certain conditions.

4. A line connecting the Isle of Pines Subdivision with the Town of Chapin may be built as per certain specifications for \$51,120.00.

5. Dowd is operating under a Consent Order with the South Carolina Department of Health and Environmental Control with regard to its Isle of Pines water system.

CONCLUSIONS OF LAW

1. No fines or penalties will be levied against the Company. Based on our view of the evidence in this case, we do not believe that it is in the public interest to do so.

2. The Company's performance bond will not be escheated. Under S.C. Code Section 58-5-720 (Supp. 2002), the bond may be escheated for the payment of fines or penalties as allowed for in S.C. Code Ann. Section 58-5-710 (Supp. 2002). As stated in our first Conclusion of Law, no fines or penalties will be levied in this case. Second, it is unclear, upon examination of S.C. Code Ann. Section 58-5-720 (Supp. 2002) as to what the proceeds of the bond may be used to accomplish, nor whether the proceeds of the bond may even be used for the benefit of the Company who has posted it. Even if the methodology for use of bond proceeds was clear, we would note that Mrs. Dowd is paying monies out of her own pocket to provide for maintenance of the system anyway, which we believe at least partially satisfies what we think would be a proper use for a bond in any case. Thus, there is no need to escheat the bond in any event.

3. Further, upon due consideration, we direct the Commission Staff to determine if performance bonds backed by a personal financial statement are appropriate for use, and if the language of S.C. Code Ann. Section 58-5-720 (Supp. 2002), the bond statute, should be amended in some fashion.

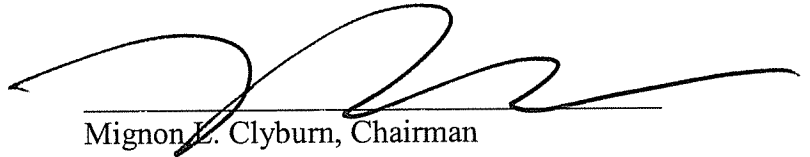
4. The Rule to Show Cause against the Company is dismissed.

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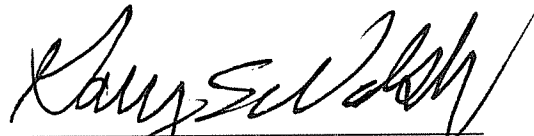
5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)